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# **SECTION 15**

## **HOW TO PURCHASE COMPETITIVELY**

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### **Sub-Section 15.100 - Getting Started**

#### **Subject 15.110 – Description of Need**

Specifications or Scopes of Work (Statement of Needs) describe the required goods or services needed and form the backbone of a good competitive procurement program. Failure to obtain the quality and type of product or service needed can, most often, be traced to poor or inadequate specifications. Specifications or statements of needs must be:

- Sufficiently complete and specific to ensure users needs are adequately met,
- Broad enough to ensure competition,
- "Reflect the procurement needs of the purchasing body rather than being drawn to favor a particular vendor." (VPPA)

Code of Virginia, Section 2.2-4300.C
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**Subject 15.120 - Generic Specifications**

Generic specifications describe requirements without reference to a brand name or model number. Generic specifications, if properly written, encourage the most competition. There are two basic types of generic specifications: performance and design.

- Performance-type specifications describe what the product or service must do. Performance specifications are the preferred type of specifications because they state the requirement in terms of what must be accomplished rather than how a product or service must be designed.

Life Cycle Costing (LCC) is a variation of a performance-type specification. A contract award, based upon LCC, takes into account all known cost factors associated with the procurement, installation, maintenance and disposal of the item purchased. In order to properly utilize LCC, it is necessary to have verifiable and accurate data on which to base the various cost factors or projected costs.

**EXAMPLE:** In purchasing a refrigerator under LCC, the following factors must be projected or determined:

- Unit purchase cost (C).
- Project a life span in years (L).
- Project the average or yearly cost of electricity over the life span (E).
- Determine the yearly consumption of electricity (CE).
- Project annual maintenance costs (if any) for the specific brand and model offered (M).
- Project the salvage value (plus) or disposal cost (minus) at the end of the life span (S).

**FORMULA:**  $LCC = C + L(E \times CE) + (L \times M) + (\text{or } -) S.$

- Design-type specifications describe how the product or service is to be designed. A good design-type specification:
  - Includes those requirements that are necessary to provide the level of quality and performance needed by the user,
  - Is brand neutral,
  - Does not include any requirements which are unnecessary and might restrict other acceptable brands from competition.
- Qualified Products Lists (QPL) are often used when the time necessary to evaluate competing brands is too lengthy to be conducted during the procurement process. QPLs can also be developed for services.

The following procedure should be followed in establishing a QPL:

Step	Action
1	Obtain product information and/or samples for evaluation against a generic specification.
2	Publish a QPL listing only those brands and models that have been approved in Step 1. (This listing may be included in an IFB.)
3	Issue IFB. Include statement that bids will be considered only on the brands and models included in the QPL. Instructions should also be included on how new suppliers can have their products evaluated for future solicitations.
4	Award contract to the lowest responsive and responsible bidder quoting on one of the products listed on the QPL.
5	If the QPL is being used for a repetitive procurement such as a term contract, vendors whose products are not submitted in time to be tested for the current procurement action should be advised of the deadline to submitting products for consideration prior to the next procurement cycle.

- Assistance in writing specifications - While it is not easy to write good specifications, assistance (including copies of existing specifications for many products/services) is available from many sources including the following:
  - Civilian and military agencies of the Federal Government.
  - Virginia Department of General Services, Division of Purchases and Supply. Phone the Specifications Section at (804) 786-8996.
  - Virginia Department of Mental Health, Mental Retardation and Substance Abuse Services. Phone the OGS/Procurement Office at (804) 786-3915.
  - National Institute of Governmental Purchasing, Inc. Phone 1-800-FOR-NIGP.
  - Other state and local governments. Contact the Purchasing Departments.
  - Vendors. **NOTE:** Any specification obtained from a vendor should be reviewed by one or more of that vendor's competitors and a generic specification written that includes the essential elements that can be met by all acceptable brands.

**Subject 15.130 - Brand Name or Equal**

When it is impractical to develop a generic specification, a brand name may be used; however, the terms and conditions of the solicitation should state that the use of a brand name will not restrict bidders to that particular brand. (See Appendix E, Section I, General Terms and Conditions – “Use of Brand Names”).

Code of Virginia, Section 2.2-4315 states...

"...unless otherwise provided in the Invitation to Bid, the name of a certain brand, make or manufacturer does not restrict bidders to the specific brand, make or manufacturer named, it conveys the general style, type, character, and quality of the article desired, and any article which the public body in its sole discretion determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted."

**Subject 15.140 - Proprietary**

A proprietary specification restricts the acceptable product to that of one manufacturer. (Proprietary is not the same as *sole source*. There may be several dealers or distributors for the proprietary brand.) A product is determined to be proprietary:

- When the desired product is to be a component of a system already in use, or
- When the use of any other similar piece of equipment would require considerable reorientation and training.

Care should be taken that a product is not declared to be proprietary when a less restrictive determination could be made.



**Example** A product that is to interface with other equipment may not need to be the same brand. It may be less restrictive to include, in the IFB, the following statement:

"Any product offered in this bid must interface with  (brand and model)  equipment now in use and the cost of any interface equipment must be included in the bidder's quoted price."

### **Subject 15.150 - Statement of Needs (Scope of Work/Services)**

A Statement of Needs or Statement of Work is frequently used in a Request for Proposals for the procurement of a service. This statement should:

- Describe the requirement in general terms,
- Include specific tasks, sub-tasks and parameters which must be accomplished by the Contractor,
- Use the words "must" and "shall" only for those areas which are mandatory, and
- Use the words "should" and "may" or "it is desirable" to describe advisory or permissible actions.

### **Subject 15.160 - Which Competitive procurement method to use?**

Introduction - Competitive Procurement methods are generally classified by:

- The degree of formality and
- The type of evaluation process.

Degree of Formality - The Virginia Public Procurement Act (VPPA) requires more formal procurement methods (sealed bidding or competitive negotiation) for purchases estimated at \$50,000 or more. (See Section 15.500 of this Manual for procedures and limits regarding Professional Services.) Emergency and sole source procurements are also allowed for purchases of \$50,000 or more provided the reasons for these actions are sufficiently documented in the procurement file, (See Section 10.200 and 10.300 of this Manual.)

**NOTE:** If the value of a procurement cannot be determined in advance, it is better to over-estimate the value rather than to underestimate; i.e., it is better to use sealed bidding and later find that the procurement amount is only \$41,000 than to use informal written quotes and then discover the procurement amounts to \$51,000. Also, if an annual contract valued at \$41,000 is renewed for a second year, the total contract value is then \$82,000 and would, therefore, require formal solicitation.

The VPPA allows public bodies to adopt written procedures providing for less formal procurement methods (telephone bids or informal written bids) for goods and services costing less than \$50,000.

The following table outlines the minimum thresholds that CSBs should adopt. Please note that the amounts shown beside the asterisks (\*) may be lower but not higher.

**EXAMPLE:** A CSB may require competition at a lower threshold than \$2,000 and may require the use of informal IFBs at a lower threshold than \$50,000.

If the procurement is <u>not</u> an emergency or sole source and is <u>not</u> expected to exceed...	Then the following procurement may be used...
\$2,000	Single Quote (no competition) if that quote appears to be fair and reasonable.
\$5,000	Single Quote (no competition) if the procurement is conducted by a certified purchasing agent (see Sub-Section 5.700 and Subject 10.130 of this Manual) and that quote appears to be fair and reasonable.
\$15,000	Solicit quotes from at least 3 valid sources by telephone. (See Subject 15-210 of this Manual).
\$50,000	Issue informal written IFBs to at least 4 valid sources (including one or more minority vendors) or utilize the informal competitive negotiation method.
Code of Virginia, Section 2.2-4301 - "Competitive sealed bidding (2)"	

Type of Evaluation Process (\$50,000 or more) - Sealed bidding is the method preferred by the VPPA for the purchase of goods or services (except professional services) amounting to \$50,000 or more in value. Formal solicitation of Professional Services is required where the estimated value is \$30,000 or more (see Sub-Section 15.500 of this Manual). The use of other methods (emergency, sole source, competitive negotiation/RFP) require written justification to explain the reasons for not using sealed bidding.

The determination of the proper competitive procurement method, where the cost is expected to exceed \$50,000, should be based upon the following circumstances:

If the procurement is expected to exceed \$50,000 and...	Then the proper procurement method would be...
The product or service can be adequately described and competition can be obtained based upon the specification or scope of work.	Sealed or formal bidding (Invitation for Bids)
The product or service cannot be adequately described without being restrictive <u>or</u> other evaluation criteria are more important than cost.	Competitive negotiation (Request for Proposals)
Services are required to be provided by independent contractors who work in areas defined in the VPPA as "professionals" and the procurement is expected to <b>exceed \$30,000</b> .	Competitive negotiation (Request for Proposals) Use special procedures for procuring Professional Services (See Sub-Section <b>15.500</b> of this Manual).
Construction (see definition in Subject 15.720 of this Manual).	Sealed or formal bidding (Invitation for Bids) See special requirements for procuring construction (Sub-Section <b>15.700</b> of this Manual).

**Subject 15.165 - Purchases using funds from Federal grants**

Where the purchase of goods or services is paid for by a Federal grant and the acceptance of that grant is conditioned upon compliance with certain procedures that conflict with State or CSB regulations or laws, the CSB may follow the prescribed Federal procedures upon written approval of the Board of the CSB.

Code of Virginia, Section 2.2-4343.B
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**Subject 15.170 - Locating and Selecting Vendors**

Sources of Vendor Names - The success of competitive procurement is usually dependent upon locating viable vendors. The following are good sources for obtaining vendor names to include on a bidder's list:

- Electronic Procurement (eVA). CSBs are encouraged to participate in the electronic procurement program for Virginia localities, referred to as eVA-Lite. eVA-LITE provides access to state contracts, electronic catalogs, vendor lists and surplus property. Solicitations may be published on the eVA web site. This services replaces and enhances the *Virginia Business Opportunities* (VBO). CSBs may register for and access this program under "Local Government Sign-Up" at: [www.dgs.virginia.gov](http://www.dgs.virginia.gov).
- Yellow pages are a good source for local vendors. Yellow pages from surrounding localities should also be obtained and used as reference. Black pages are published in many localities to provide information on minority-owned businesses.
- Reference publications such as Thomas Register and McRays Blue Book, provide names and addresses of vendors for various types of goods and services. Trade journals are also good sources for vendors.

- Vendor lists - Individual CSBs may wish to maintain their own vendor list. This reduces the need for conducting an extensive vendor search each time a solicitation is issued; however, it is time consuming to maintain vendor lists in a current status and CSBs may wish to opt for the eVA-LITE program instead. If a CSB utilizes eVA-LITE, vendors wishing to sell goods or services to the CSB can be directed to the eVA web page. If the CSB maintains its own vendor list, vendors wishing to have their names placed on the Vendor's List for a Community Services Board should file a Vendor's Mailing List Application or submit pertinent information in a letter. This information should include:
  - ◇ Name.
  - ◇ Address.
  - ◇ Telephone and FAX numbers and e-mail addresses.
  - ◇ Federal Tax (FEI/FIN) or Social Security number.
  - ◇ The commodities for which they wish to be solicited.

After the application is reviewed and approved, the vendor is placed on the active Vendor's List. The CSB has the right to make on-site inspections or other inquiries to verify a vendor's capability prior to being placed on the list as an approved source. If a vendor's application is disapproved, the vendor shall be notified in writing, and the notice shall state the reasons for the action taken. The vendor may appeal such action within thirty (30) days of receipt of this letter.

Code of Virginia, Section 2.2-4357
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A vendor may be removed from the Vendor's List for failure to respond to four (4) consecutive solicitations. A vendor so removed must be placed back on the list if a written request is submitted.

(Also, see Subject 20.130 for removal for default.)

- Other purchasing offices (state and local) can often provide vendor names and addresses.

- Minority Vendor Lists are maintained by the Virginia Department of Minority Business Enterprise (DMBE). This Department can also assist in advertising specific procurements. DMBE can be reached at their web site: [www.dmbe.virginia.gov](http://www.dmbe.virginia.gov) or phone 804-786-6585 or 800-223-0671.
- Trade shows provide opportunities to meet vendors, obtain names and addresses of potential suppliers and keep up to date on the latest developments in a particular field.

Obtaining vendors by advertising - In addition to mailing solicitations to vendors, advertisements may be placed in various publications inviting vendors to participate in a particular solicitation. This advertisement may be very brief but should indicate:

- A brief description of the goods/service to be procured and the identifying name and/or number of the RFP or IFB .
- The date, time and place that bids or proposals for receipt of bids or proposals.
- The date, time and place of a pre-bid or pre-proposal conference, if one is to be conducted.

Advertisements may be placed in the following publications:

- Local or regional newspapers - Advertising in a newspaper or newspapers of general circulation in the area in which the contract is to be performed is required for Requests for Proposals expected to exceed \$50,000 (\$30,000 for professional services). Newspaper advertising is optional for other solicitations such as Invitations for Bids. A model newspaper advertisement is shown in Appendix G-1 of this Manual.

Code of Virginia, Section 2.2-4301 "Competitive Negotiation" – 2
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- Minority-owned newspapers - Consideration should be given to advertising in minority-owned newspapers in an attempt to attract minority bidders/offerors.

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### **Subject 15.180 - Pre-Bid and Pre-Proposal Conferences**

A pre-bid or pre-proposal conference may be scheduled for complex, large or critical requirements in order to clarify critical aspects of the solicitation, eliminate misunderstandings, and permit vendor input. The date, time and place for these conferences must be stated in the IFB or RFP and on other postings and advertisements concerning the procurement. Other important considerations are:

- Attendance at a pre-bid or pre-proposal conference is usually optional; however, if the CSB believes it is necessary for bidders to attend the conference in order to obtain information necessary for bidding, attendance may be made mandatory. If attendance is mandatory, no bids may be accepted from firms that did not attend the conference.
- Site visits may also be offered and may be scheduled at a different time or may be included as part of a pre-bid or pre-proposal conference. Attendance may be made optional or mandatory.
- Changes to or alterations in the requirements or specifications as a result of the pre-bid or pre-proposal conference must be included in an addendum to the IFB or RFP.
- Scheduling a pre-bid or pre-proposal conference involves:

- ◇ Setting a date and time,

**Recommendation:** Schedule conference at least one week after solicitation is distributed (to give time for participants to make plans to attend) and at least two weeks before bids or proposals are due (to give time to issue any addendum that may be needed).

- ◇ Reserving an accessible room,

- ◇ Determining who will speak for the CSB,



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- ◇ Having extra copies of the solicitation available, and
- ◇ Having someone record (electronically or in writing) the points discussed during the conference.

The person conducting the pre-bid or pre-proposal conference should:

- Welcome participants and introduce key CSB people.
- Require all present to sign an attendance register.
- Explain the purpose of the conference and explain that no changes resulting from the conference are official unless issued in writing in the form of an addendum.
- Review the solicitation page by page with emphasis on special conditions, specifications and site conditions that must be addressed in solicitation responses.
- Control the conference, consider all vendor comments, encourage vendor participation, and be sure that all questions and answers are heard and understood by all.
- Review the transcript or recording to determine the need for revising the solicitation by issuing an addendum. A model addendum is included in Appendix F of this Manual.
- Refrain from:
  - ◇ Expressing opinions on the validity of the requirements.
  - ◇ Telling vendors how to do their job.
  - ◇ Discussing the pros and cons of vendor questions in front of vendors.

- ◇ Taking a vote on matters being discussed.
- ◇ Arguing with vendors at the conference.

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**Subject 15.190 - Samples**

Samples - Samples may be required to be submitted with bids or proposals for evaluation purposes. When samples are...

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**Received**

They should be labeled, stored and properly controlled until no longer needed.

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**Not destroyed in testing and no longer needed.**

The bidder/offeror should be notified that he/she may pick them up or give instructions for their return at his/her expense.

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**Not reclaimed by the bidder/offeror within 60 days of notification.**

- The samples may be:
- Disposed of in accordance with the methods of disposing of surplus property (see Section 30 of this Manual) OR
  - The samples may be used in the internal operation of the CSB.
  - **Samples must not be given to CSB employees for their personal use.**
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**Subject 15-191 - Contractor Licenses**

Certain contractors are required by the Commonwealth of Virginia to be properly registered and licensed, or to hold a permit, prior to performing specific types of services. Among the required licenses are the following:

- Contractor Licenses - A contractor performing, managing or offering to perform or manage work involving construction (including removal, repair or improvements on land or buildings) is required to be licensed by the Department of Professional and Occupational Regulation, Virginia Board for Contractors if the value of the contract exceeds \$1,000. The bidder or offeror must be licensed even if he/she is going to subcontract the construction portion of the contract to another contractor. The following classes of license are required:
  - ◇ Class A - If the amount of the specified contract exceeds \$70,000 for a single contract or \$500,000 over a twelve month period.
  - ◇ Class B - If the amount of the specified contract is between \$7,500 (\$1,000 for electrical, plumbing and HVAC work) and \$70,000 for one job or between \$150,000 and \$500,000 within a 12 month period.
  - ◇ Class C - If the amount of the specified contract is between \$1,000 and \$7,500 or if the total value of work undertaken in a 12 month period does not exceed \$150,000. Class C contractors shall not include electrical, plumbing and heating, ventilation and air conditioning (HVAC) contractors.

Where licensing is required:

- ◇ The solicitation (IFB or RFP) must state that the appropriate contractor license number shall be furnished with the bid or proposal.

- ◇ If a contractor who is already licensed fails to submit the license number with the bid/proposal, the bid/proposal may still be considered if the contractor promptly submits the number upon the request of the purchasing office.

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- ◇ An unlicensed vendor submitting a bid or offer where such license is required is nonresponsive and is in violation of state law.
- ◇ The contractor must be licensed at the time he/she submits a bid or proposal or his/her bid or proposal cannot be considered.
- ◇ Any buyer who knowingly receives or considers a response from an unlicensed vendor when a license is required is in violation of the Code of Virginia.

If there is any question as to whether a licensed contractor is required for a specific procurement, call the State Board for Contractors for information at 804-367-8511 or 804-367-2785 for policy interpretation.

Code of Virginia, Section 54.1-1100
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- Other Licenses - Other types of contractor licenses include:

<u>Type of Service</u>	<u>Regulatory Agency</u>
Pesticide Application	Department of Agriculture and Consumer Services
Asbestos Service and Fire and Security System Installation	Department of Professional & Occupational Regulation
Treatment, Storage, Handling, Transportation or Disposal of Hazardous Waste or Hazardous Radioactive Material	Department of Environmental Quality

**Subject 15.195 - Multiyear Contracts**

Term contracts may be written for a multiyear period, usually not to exceed five years. Advantages that can result from multiyear contracts are:

- Decreased administrative work (issuing solicitations, awards, etc.).
- Potentially better pricing because of longer contract and more total volume.
- Continuity of vendor relationship and reduction of contract start-up time.

Multiyear contracts may be achieved by:

- Setting the initial contract term at 2, 3, 4, or 5 years and/or
- Including an escalation clause which allows extension of the contract for one or more years beyond the initial term. (See Price Escalation/Deescalation Clause in Section II of Appendix E.)

Contracts which do not contain renewal clauses cannot not be extended beyond their expiration dates except when justified in writing by extenuating circumstances. Such extension should normally not exceed six months. (See Subject 15.197.)

**Subject 15.197 – Modification of Contracts**

A contract may contain provisions for modification (see Appendix E: “Changes to Contract” clause in Section I and “Price Escalation/Deescalation” clause in Section II); however, “no fixed price contract may be increased by more than

twenty-five percent of the amount of the contract or \$50,000, whichever is greater,” without the advance written approval of the CSB’s Board.

**Definition:** A fixed price contract is one that provides for a firm unit or total price with no provisions for escalation/de-escalation.

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“In no event may the amount of any contract, without adequate consideration, be increased for any purpose, including, but not limited to, relief of an offeror from the consequences of an error in its bid or offer.” The term of a contract may be extended (usually for a period not to exceed six months); however, “to allow for completion of any work undertaken but not completed during the original term of the contract”.

Code of Virginia, Section 2.2-4309
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## **Sub-Section 15.200 - Small Purchase Procedures**

### **Subject 15.210 - Telephone Quotations**

Quotations may be obtained via telephone *or FAX* for procurements not exceeding \$15,000. When telephone quotations are obtained:

- At least three (3) potential bidders should be contacted.
- Each bidder should be provided with the same verbal description of the desired product/service. Therefore, no one bidder is given an advantage by being provided with more information than his/her competitors.
- A record of all bids should be made and included in the procurement file. This record should include:
  - The name and address of the bidder contacted.
  - The name of the individual giving the quote.
  - The FOB point.
  - The delivery date.
  - Payment terms.
  - Make and model quoted.
  - The amount of the bid

NOTE: A telephone bid tabulation form, such as the one in Appendix H-1 of the Manual, is a good format in which to record this information.

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- If the CSB decides that an alternate quotation (not an equal to that specified) is acceptable, each of the other bidders must be contacted and given an opportunity to requote on the new description.
- Award to the lowest responsive and responsible bidder. (See Subject 15.911 and 912.)

**Subject 15.220 - Informal Written Quotations**

Informal written quotations should be solicited from at least four (4) potential bidders for procurements estimated at between \$15,000 and \$50,000 in value. Informal written quotation may also, at the CSB's option, be obtained for any procurement estimated at less than \$15,000. When Informal Written Quotations are obtained:

- The general format for sealed Invitations for Bids may be used with the modifications noted herein.
- Informal quotations are not required to be opened at a formal public bid opening.
- Informal bids may be received by telefax or e-mail.
- A due date and hour is established for receipt of the bids.
- The bid solicitation should contain a full description of the goods or services required as well as the General Terms and Conditions.
- Clarifications may be made by telephone, upon request, to any bidder; however, if such clarification provides substantive information to one bidder that would also be useful to other bidders:



- ◇ A written addendum to the bid solicitation should be issued to all bidders.
- ◇ This may necessitate an extension of the bid opening date and hour.

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**Subject 15.225 - Informal RFP (Unsealed Proposals)**

An informal Request for Proposals (RFP) may be used for purchases of goods or services where:

- The estimated cost of the procurement is less than \$50,000 (or less than \$30,000 for professional services) and,
- It is not practical to utilize the Unsealed Bids method (Refer to Subject 15.410 for the four criteria for using an RFP).

The procedures for utilizing an Informal RFP are:

Step	Action
1	Send out a solicitation which includes: <ul style="list-style-type: none"> <li>• A cover sheet.</li> <li>• A general description of the desired goods or services.</li> <li>• The evaluation criteria.</li> <li>• The General Terms and Conditions (either in full or by reference).</li> <li>• Any Special Terms and Conditions that may be needed.</li> </ul>
2	Advertise the RFP by: <ul style="list-style-type: none"> <li>• Soliciting the proper number of sources (at least 4 are recommended),</li> <li>• Publicly posting and</li> <li>• Advertising in the Virginia Business Opportunities/eVA is also strongly recommended.</li> </ul>
3	Offers are due at a designated location, date and hour but may be opened and evaluated upon receipt.

Step	Action
4	The evaluation may be conducted by the buyer and/or the initiator.
5	Negotiations are conducted with the offerors selected and an award made.

**Subject 15.227 – Electronic Mall**

The Virginia Department of General Services/Division of Purchases and Supply (DGS/DPS) has established an Electronic Mall (e-Mall) to facilitate the ordering of goods and services by public bodies. CSBs can use eVA Lite for purchases against State contracts in any dollar amount (unless dollar limits are specified in the contract) or for small purchases up to \$15,000. The e-Mall is located on the eVA web site and includes, but is not limited to, state contracts, electronic catalogs and surplus property. This program is called eVA Lite. Information can be obtained from the DGS/DPS web site at the following address: [evalite.dgs.state.va.us](http://evalite.dgs.state.va.us).

**Subject 15.230 - Vendor's Contract Form**

Many vendors will insist that purchasers sign the vendor's standard contract form. These forms often contain terms that are not in the purchaser's best interest and, sometimes, result in the purchaser giving up some of its rights.

- CSBs should not sign these forms unless there is no other vendor from whom the necessary goods or services can be reasonably obtained.
- If signing the vendor's (contractor's) form is necessary, the CSB should insist that an "Addendum to Vendor's Contract Form" (see Appendix K-5) is also executed.

## **Sub-Section 15.300 - Formal Bidding (Invitations for Bids)**

### **Subject 15.310 - Construction of the IFB**

Competitive Sealed Bidding utilizing the Invitation for Bids (IFB) procedure, is the formal procurement method that is preferred under the Virginia Public Procurement Act. A model Invitation for Bids (IFB) is included in Appendix C of this Manual. The following components must be included in an IFB:

- Opening Date and Hour - The number of days between the posting of the IFB (see "Public Posting" below) and the opening date and hour must be at least ten (10) days. In most instances, this time should be longer:
  - ◇ If the IFB is mailed to potential vendors, additional time may be required.
  - ◇ Sometimes bids are accepted until the due date and hour but not opened until the same time on the next business day. This procedure is primarily used for construction bids and, if used, must be so noted on the IFB.

- Pre-Bid Conference - If a pre-bid conference is to be held, indicate the date, time and place and whether or not attendance will be mandatory. (See Subject 15.180 of this Manual.)
- Complete Description of the Required Goods or Services - The description (specifications) should be as complete as possible so as to adequately describe the goods or services required but also as broad as possible so as not to unnecessarily prevent competitive brands from being considered. (See Subjects 15.120 through 15.140.)

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Clarification of specifications or other requirements may be provided to bidders upon request; however, if the clarification is such that other bidders would also benefit from such clarification, an addendum must be issued to provide this information in written form to all bidders.

- Terms and Conditions - Include the standard General Terms and Conditions and those Special Terms and Conditions as may be applicable in the IFB. (Refer to Appendices C and E of this Manual.) Terms and Conditions should be carefully chosen as they form the legal framework of the contract. Use indemnification and/or liquidated damage clauses only when certain circumstances are present:
  - ◇ Indemnification clauses are used to protect either the contractor of the purchaser against any liability that might result from the execution of the contract. CSBs should not indemnify (protect) contractors from legal actions without advice from their legal counsel and clauses indemnifying the CSB should be used only when legal counsel feels it is necessary for that particular contract. (See Appendix E, Section II, Statement 37)
  - ◇ Liquidated damage clauses require the contractor to make certain payments to the purchaser in the event that the project is not completed on time. Unless actual damages, such as loss of revenue or rental payments for other facilities can be quantified, a liquidated damage clause should not be used. Penalties (payments not based upon actual or anticipated expenses) cannot be required of a contractor.

- Public Posting - The VPPA requires a copy of the IFB to be posted in a designated public area (such as the procurement office bulletin board) or a notice published in a newspaper of general circulation or both for a period of at least ten (10) days. (See Appendix G. of this Manual for a sample newspaper advertisement.)

Code of Virginia, Section 2.2-4302 "Competitive Sealed Bidding"
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### **Subject 15.320 - Evaluation**

The bids received must be evaluated in accordance with the scope of work, specifications, and terms and conditions of the IFB.

- References, if requested in the IFB, should be contacted and a record made of their responses to the questions asked. The same questions should be asked of each reference.
- Contract award must be made to the lowest responsive and responsible bidder.
- Negotiations are not permitted in a sealed bid environment unless the lowest responsible bid exceeds available funds. If the CSB believes negotiations may be necessary on an IFB, the IFB's Special Terms and Conditions should include the "Negotiations with Lowest Bidder" clause (see Appendix E, Section II of this Manual).

Code of Virginia, Section 202-4318
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- A low bidder meeting the minimum specifications cannot be rejected in order to accept a higher bid offering more than the minimum specifications.

- Notations should be included in the file indicating the specific specification or other bid requirement(s) that was(were) not met by each bidder who submitted a quotation which was lower than the bid which was accepted. (See Appendix H of this Manual for sample evaluation forms.

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**Subject 15.330 - Changes in Bids**

- Withdrawal or Amendments - The generally-accepted rules regarding bidders withdrawing or amending a bid are:
  - Bids may be withdrawn or amended at any time prior to the due date and hour.
  - Bids may not be amended after the due date and hour.
  - A bidder may be permitted to withdraw a bid containing an obvious error after the due date and hour; however, that bidder cannot be permitted to participate in the resulting contract by supplying material under a subcontract or through financial interest in the resulting contract.

Code of Virginia, Section 2.2-4330
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- Mistakes in Bids - The CSB employee responsible for handling a bid program should, as soon as possible, contact a bidder who submits a bid which appears to contain errors in order to verify the correctness or incorrectness of the bid. Bid error should be suspected when the difference between the lowest bid and the next lowest bid is 25% or more.

DOCUMENT: A record of this contact and the bidder's response should be documented in the procurement file.

Mistakes discovered after the due date and hour should be handled as stated in the chart on the following page.

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Type of Mistake	Permissible Action
Does <u>not</u> affect price, quality, quantity, or delivery	Considered an informality. May waive or correct error. <u>Example #1</u> : Not returning the correct number of copies of the bid. <u>Example #2</u> : Not signing the bid, provided a signed cover letter or other signed document is provided which indicates the bidder's intent to be bound. <u>Example #3</u> : Not returning a bid addendum, provided the bid clearly indicated that the terms of the addendum are included in the bid.
The intended correct bid price or term is evident.	Bid may be corrected. <u>Example</u> : A bidder quotes \$135 per pound when it is evident that the bidder intended to quote \$135 per cwt. Or \$1.35 per pound.
The bid contains an obvious error; however, the correct quotation	The bidder may be allowed to <u>withdraw</u> the bid but not to correct it.

Type of Mistake	Permissible Action
information (price, etc.) is <u>not</u> evident.	
The bidder claims that there is an error in the bid; however, the error is <u>not</u> evident.	The CSB may refuse to allow the bid to be withdrawn.

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**Subject 15.340 - Procurement of Printing** - Printing is normally procured through:

- Formal Bidding (IFB).
- Small Purchase procedure.
- CORPRINT (Virginia Department of Corrections) - No competition is required for purchases from the Department of Corrections.
- Sheltered Workshop (See Section 10.700 for procedures pertaining to procurements from sheltered workshops).
- Cooperative Procurement - Consideration should be given to cooperative procurements or, at least, standardization of forms with other Community Services Boards. The unit cost (price per 1,000 copies) of printing often decreases with an increase in quantity.

Factors to be considered in the procurement of printing are:

- Artwork and Graphic Design - Printing may involve either photographing artwork or text furnished by the customer or the printer can set the type. Typesetting is more expensive than using camera ready text. The CSB should specify that all artwork, negatives, dies, overlays or similar

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material used to print a job remain the property of the CSB. (See the clause on “Ownership of Printing Materials” under “Printing” in Appendix E, Section II of this Manual.) This permits a reprinting without having to use the same printer or of paying to recreate the artwork.

Page 15-29

- Proofs and Alterations - A proof should be requested when typesetting is required.
  - ◇ Galley proofs (large sheets) should be specified since the cost of making corrections on galley proofs is less than the cost of correcting page proofs.
  - ◇ Page proofs, blue line, or velox must be requested in the solicitation if they are required. These are more expensive than galley proofs.
  - ◇ Changes (as opposed to corrections of the printer's mistakes) made to proofs are expensive and difficult to make and often cause production delays.
- Cost Factors - Factors that add to the cost of a printing job are:
  - ◇ Multi-colors.
  - ◇ Non-standard paper and sizes.
  - ◇ Heavier weight or rag content of paper.
- Overruns and Underruns - A CSB is not required to accept overruns; however, an overrun up to 10% is standard. The price for overruns

should not exceed the unit cost (usually the cost per thousand) or the cost for additional copies run at the same time (RAST), if quoted in the solicitation. (This cost should be equal to or less than the unit cost.) Underruns may be accepted; however, the price should be calculated at the quoted base price per unit.

- Copyright - Vendors should be prohibited, by terms of the solicitation, from copyrighting any work contracted for by the Community Services Board and produced for the CSB without the written consent of the CSB. (See the "Ownership of Printing Materials" clause under "Printing" in Section II of Appendix E of this Manual.) Also, the solicitation should state that any negatives, dies, software, etc. produced by the vendor in providing goods/services to the CSB shall be the property of that CSB. (This allows other vendors to quote on future requirements without having to charge for set-up or artwork.)

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#### **Subject 15.350 - Posting**

Posting of awards is recommended when the amount of the procurement is \$15,000 or more. Posting involves:

- Placing a copy of the purchase order, contract, or tabulation sheet (with the awarded vendor's price circled or otherwise noted) on the procurement bulletin board OR
- Placing a notice of intent to award (see sample in Appendix J of this Manual) on the procurement bulletin board.
- In addition, award notices may also be posted on the CSB internet site.

Bidders may protest an award within ten (10) calendar days after the posting of an award notice (see Section 50 - Appeals); therefore, if a protest is anticipated and there is sufficient time available, a notice of intent to award may be preferable. If no notice of protest is filed within ten (10) calendar days after the posting of a notice of intent to award, the award (purchase order or contract) may then be posted and an award issued without threat of protest.

#### **Subject 15.360 - Award of Contract**

A bid may be accepted by the issuance of some type of award form including a purchase order, contract form or a letter. The award form (see Appendix J of this Manual for examples) should reference the bid submitted by the successful bidder (plus any addenda thereto) and be signed by an official of the CSB who is authorized to bind the CSB.

Other Documentation - The file must be fully documented to indicate the why, who, what, when, where, and how of the transaction. For example:

Why - Any justifications such as proprietary, or emergency purchase.

Who - Who requested and approved the purchase?

What - Description of what was purchased.

When - Documentation of time frames.

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Where - Location of required item or service.

How - What procedures were used for the purchase? Include documentation of bidders' list, individual quotes, reasons for rejection of low bid, etc.

- If only one bid is received, a memo to the procurement file should indicate:
  - ◊ The reasons for the lack of competition,
  - ◊ The basis for the determination that the prices quoted were fair and reasonable, and
  - ◊ A determination that the specifications were reviewed to ensure that they did not unduly restrict competition.
- Any other determination or action that has any substantive impact upon the procurement should be documented in the procurement file.

### **Subject 15.370 – Two-Step Sealed Bidding**

When Used: Two-step competitive sealed bidding is used when it is impractical to initially prepare a definitive purchase description to support an award based on prices. In such instances, an IFB is

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issued requesting the submission of unpriced technical proposals, to be followed by an IFB for a price, limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation. There is no negotiation in the two-step competitive bid process; however, the CSB at its option may request information from bidders to clarify material contained in their technical proposals

Procedures:

Step One – Prepare an IFB requesting a technical proposal. The solicitation should describe the CSB's requirement in general terms and ask for a technical proposal describing how the bidder intends to meet the CSB's requirements and what goods, equipment and service, as applicable, will be furnished. The IFB should

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Procedures (Continued) specify any mandatory technical data and information that is required to be submitted with the technical proposal and/or any optional information that the CSB desires to be submitted. The cover sheet should explain the two-step procedure and emphasize that the technical proposal is not to include the bid price.

The cover sheet should indicate if a pre-bid conference will be conducted and if attendance is mandatory or optional. The proposals are publicly opened and the names of the firms submitting proposals are announced. The CSB then evaluates and selects those proposals which will meet its needs, based on the mandatory criteria specified in the solicitation. The evaluators may request written or oral discussions from bidders to clarify or amplify the material in the proposal. The contents of the technical proposal are not subject to negotiation and must be evaluated as submitted. They are not ranked but are determined to be either acceptable or not acceptable for meeting the CSB's needs. Only those responsive bidders whose technical proposals were determined to be acceptable will be invited to submit a bid price.

Step Two - Prepare an IFB to include a pricing schedule, reference the request for technical proposal title and number, and set a

specific date and time for receipt of sealed bids. A public bid opening is held. Bids are evaluated, and the contract is awarded to the lowest responsive and responsible bidder. The award document must incorporate by reference the terms and conditions of the solicitation, the contractor's technical proposal, and the bid price.

Combined  
Two-Step  
Sealed  
Bidding

Steps One and Two can be combined by requiring firms that respond to the solicitation to furnish their un-priced technical proposals in one sealed envelope and their bid prices in a separate sealed envelope. One envelope should be marked "Technical Proposal" and the other "Bid Price" and each envelope identified with the bidder's name and the bid reference number. The technical proposals are opened and

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evaluated as described in Step One and then only the price envelopes for those technical proposals selected as acceptable are opened. The award is made to the lowest responsive and responsible bidder. The award document will incorporate by reference the terms and conditions of the solicitation and include the contractor's technical proposal and bid price. Envelopes containing the bid price for those proposals determined to be not acceptable must be returned to the bidder unopened.

## **Sub-Section 15.400 - Competitive Negotiation (Request for Proposals)**

### **Subject 15.405 – Written Determination**

The use of a Request for Proposals (RFP) requires that a written determination be placed in the procurement file explaining why it is not practicable or fiscally advantageous to utilize the Invitation for Bids (IFB) procedure. (This is required because the Code of Virginia designates the IFB procedure as the preferred method of procurement.) The reasons for using an RFP and the basis for the written determination are normally one or more of the following:

- Specifications or a scope of work cannot be written to adequately describe the requirements; or,
- The requirements cannot be described in such a manner as to permit open competition; or
- Advances in technology may create a dynamic environment in which several alternatives might be possible; or,
- Concept and quality factors far exceed price factors in determining the most desirable product or service.

Code of Virginia, Section 2.2-4303.C
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#### **Subject 15.410 - Construction and Distribution of the RFP**

A model Request for Proposals (RFP) is included in Appendix D of this Manual.

The RFP method may be used to procure goods or non-professional services and involves the following procedures:

Prepare the RFP. The following sections should be included in the RFP:

<b>Purpose and Background</b>	This section provides a brief statement of what is being requested and some pertinent background information or historical facts or events that led to the present requirement. This section may be separated into two separate sections: Purpose and Background, if necessary.
<b>Statement of Needs or Scope of Work</b>	The Statement of Needs (or Scope of Work) should include a description of the product and/or services that the successful vendor will be required to provide. These requirements should be stated in terms that are as broad as possible so as not to unnecessarily restrict an offeror in developing a creative proposal. It is important to

	<p>remember that the final contract will result from negotiation sessions; therefore, it is better to allow offerors the freedom to propose various alternatives and options for meeting the needs of the CSB. The words “must” and “shall” should only be used for those requirements that are absolutely mandatory. The words “should” and “may” or “it is desirable” can be used to describe permissible actions or features that would be “nice to have” but may not be essential.</p>
<b>Qualifications of the Provider</b>	<p>This section should include any specific requirements that the offeror must possess, such as special licenses or experience, in order to be considered.</p>
<b>Proposal Preparation and Submission Requirements</b>	<p style="text-align: center;">Page 15-35</p> <p><u>General Requirements:</u> Note, in the RFP, the number of copies of the proposal (in addition to the original) that should be returned. The number required depends upon the number of persons serving on the Evaluation Panel (one copy for each person). Also, note any other requirements and indicate if there may be an opportunity for <u>oral presentations</u> during which offerors may clarify or elaborate on their proposals.</p> <p><u>Specific Proposal Requirements:</u> Request information that the offeror should include in the proposal to assist the evaluation team in evaluating the proposal. Note that specific information should be requested in this section that will support each evaluation criteria. For example, if one of the evaluation criteria is experience in providing a particular service, the offeror should be asked to explain, under the “Specific Proposal Requirements” section, the type and amount of experience that the offeror has in providing this service.</p>
<b>Evaluation and Award Criteria</b>	<p><u>Evaluation and Award Criteria.</u> The evaluation and award criteria must be developed and each criteria</p>

<p><b>Evaluation and Award Criteria</b> (Continued)</p>	<p>should be assigned a weight (usually a percentage). The criteria (without the weights) must be included in the RFP. The weights may be held in confidence until the opening of the RFP and then be posted for review by any interested party OR the weights may be included in the RFP. Factors that may be included in the evaluation and award criteria include:</p> <ul style="list-style-type: none"> <li>◇ Experience in providing the goods or service.</li> <li>◇ Quality of equipment or service offered.</li> <li>◇ Suitability of the equipment or service offered for the purpose intended.</li> </ul> <p style="text-align: center;">Page 15-36</p> <ul style="list-style-type: none"> <li>◇ Scope and suitability of training offered to CSB personnel.</li> <li>◇ Maintenance support.</li> <li>◇ Price. (Price must be considered but is not the only criteria.)</li> </ul> <p><u>Award</u>: An explanation of the process for evaluation and award should be included here. Use the appropriate Award statements (8-F for goods and non-professional services or 8-G for professional services) that are provided in Section II of Appendix E.</p>
<p><b>Reporting and Delivery Requirements</b></p>	<p>Included in this section are any documents, progress reports, etc. that the successful offeror will be required to furnish during the term of the resulting contract.</p>
<p><b>Pre-Proposal Conference</b></p>	<p>If a pre-proposal conference is to be held, indicate the date, time and place and whether or not attendance is</p>



	mandatory. (See Section 15.180 of this Manual)
<b>General Terms and Conditions</b>	Include the General Terms and Conditions from Section I of Appendix E. These General Terms and Conditions may be modified to reflect the requirements of an individual CSB; however, the CSB's attorney should review any changes to standard terms and conditions.
<b>Special Terms and Conditions</b>	Include any of the Special Terms and Conditions from Section II of Appendix E as well as any other terms and conditions that may be applicable to the RFP.  Page 15-37
<b>Method of Payment</b>	Information regarding the submission of invoices and frequency of payment should be included in this section.
<b>Pricing Schedule</b>	A pricing schedule may be included in the RFP if it is desirable that offerors quote pricing in a specific and unified method, i.e., lump sum, hourly rate, unit price, etc.
<b>Attachments</b>	List any attachments that may be necessary such as required time lines, historical usage data and/or a contractor information sheet.

Advertise and Distribute the RFP - The VPPA requires RFPs to be:

- Posted in a public area (procurement bulletin board) for at least ten days prior to the date and time set for receipt of proposals.
- Advertised in a "newspaper or newspapers of general circulation in the area in which the contract is to be performed".
- In addition, the RFP should be mailed to at least six (6) vendors. Advertising through eVA and on the CSB web site is strongly recommended.

Code of Virginia, Section 2.2-4301 "Competitive Negotiations"
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Select the Evaluation Panel - This panel should be kept small (three to five persons) and should include the person handling the procurement process.

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**Subject 15.420 - Open the Proposals**

The proposals may be opened publicly (if indicated on the RFP cover sheet) at the date and time specified. A public opening is not required by law. If a public opening is held, read only the names of the Offerors. The contents of the proposals are subject to negotiations and, therefore, should not be revealed until the award or intent to award is posted. Late proposals cannot be considered and must be returned unopened.

**Subject 15.430 - Withdrawal of Proposal**

Offerors may withdraw or amend their proposals at any time prior to the due date and hour for the proposal. Since proposals are subject to negotiations, they may be amended during negotiations or withdrawn at any time prior to award of the contract.

**Subject 15.440 - Evaluation Process**

The Evaluation Process includes the following:

- Buyer Review of the Proposals - The person handling the procurement should review the proposals to determine if all proposals are complete and in compliance with the mandatory requirements of the RFP. Any

offerors who have failed to include any required items of information may be given a short time to provide the missing information or furnish evidence of intention to comply with the mandatory requirement(s). Failure to furnish the information within the time allowed may adversely affect the scoring of that proposal. Unlike bids, proposals are normally not rejected as nonresponsive.

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- Provide Instructions to the Evaluation Panel - The person handling the procurement should provide written instructions to the evaluation panel. These instructions should include the following:
  - ◇ The panel members should determine and prepare a written list of areas of noncompliance and areas needing clarification for each proposal in relationship to the requirements set forth in the RFP.
  - ◇ Each member of the panel should independently review each proposal and prepare a handwritten listing of the strengths and weaknesses of each proposal.
  - ◇ The panel members must not contact any of the Offerors. They must also not reveal any information or tentative conclusions on the relative merits of the proposals.
- Evaluate Proposals -The chairperson of the Evaluation Committee should:
  - ◇ Determine that all preliminary studies have been completed by each member.
  - ◇ Review the committee's list of apparent noncompliance and questionable areas with the entire committee and have the committee determine the need for clarification by the Offeror.

- ◇ Schedule a question and answer clarification conference (oral presentation) with one or more of the Offerors if such a conference is deemed advisable. If oral presentations are anticipated, the provision for such conference should be included in the "Proposal Preparation and Submission Requirements" section of the RFP. This conference:

- ⇒ May be conducted either in person or via the telephone.

- ⇒ Is limited to a clarification or verification of the Offeror's written proposal.

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- ⇒ Will not include negotiations.

- ⇒ May require the Offeror to document an answer if a written clarification is deemed, by the Chairperson, to be advisable.

- ◇ Perform (or have another Evaluation Committee member perform) reference checks or inspections, if required by the evaluation criteria, as follows:

- ⇒ Each reference should be asked the same questions and a brief summary of the answers recorded for the file.

- ⇒ If equipment is required by the RFP, a demonstration test or on-site inspection is permissible provided that such requirements are set forth in the RFP.

- Complete Evaluation by Assigning Points - Each proposal not eliminated due to incompleteness or failure to comply with mandatory requirements, must be assigned points in accordance with the evaluation criteria in the RFP and the weights previously assigned:

- ◇ Non-subjective criteria (such as price) should be assigned points by assigning the maximum number of points to the best (lowest price) proposal and prorating the points assigned the other proposals. This prorating may be accomplished by using a formula, such as the following example which is used to evaluate the cost factor of each proposal, (Assume that the cost factor has been assigned 25 points):

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<u>Formula</u>	<u>Example</u>
LOWEST PRICE OFFERED	\$25.89
(Divided by)	
OFFEROR'S PRICE	\$29.05
(Equals)	
PERCENT FACTOR	.891
(Multiply this percent factor by)	
THE MAXIMUM AVAILABLE POINTS	25
(This equals the)	
POINTS ASSIGNED TO THIS FACTOR	22.3

- ◇ Each subjective criteria (experience, quality, suitability, etc.) should be rated for each offeror by assigning points (not necessarily the maximum) to the best proposal for each criteria. The other proposals for each criteria should be assigned less points, the number of points depending upon their compliance with the requirements of the particular criteria. Scoring of criteria:

⇒ Is based upon fact, as presented in the proposal, even though it may be a subjective evaluation of the fact.

⇒ Should not penalize an Offeror due to lack of experience with the CSB itself, but should be judged, among other consider-

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ations, on the relevancy of experience and expertise wherever it occurred.

- ⇒ Should not give an Offeror an unfair advantage of points simply because of a previous contractual relationship with the CSB; however, the relevancy of such experience in terms of the RFP's statement of needs may be judged.
- ⇒ Shall not be manipulated to favor a preferred Offeror, but shall be assigned in an impartial manner.

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- ◇ The cost factor should not predominate. The weights should be assigned so that other factors (or the combination of other factors) should be able to override cost. The purpose of this phase of the process is to establish ranking for negotiation. Contract award is not determined at this point.
- Complete Evaluation Consensus Form - A consensus form should be prepared which includes the points assigned by each evaluator and an average of all points assigned to each Offeror. The file should include any written comments which support the evaluation consensus. (See Appendix H for a model consensus form.)
- Select the Offerors with whom negotiations are to be conducted - The evaluation committee should:
  - ◇ Rank the Offeror's based upon their average total score. Two or more of the top ranked Offerors who have been deemed to be fully qualified and best suited among those submitting proposals (the Offerors with the highest scores) must be chosen for negotiations. Should the evaluation committee determine in writing that only one Offeror is fully qualified, or that one Offeror is clearly more highly qualified and suitable (has considerably more points than any of the others), a contract may be negotiated and awarded to that Offeror.

- ◇ Discuss each Offeror's proposal in detail to determine the areas that need to be negotiated, including areas in which the CSB will attempt to obtain concessions from the Offeror(s).

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#### **Subject 15.450 - Negotiations**

Negotiations should be conducted on the points selected by the Evaluation Committee. (See Appendix I for "Guidelines for Negotiations".) Care should be taken to assure that information contained in other proposals or obtained from other offerors is not divulged. Negotiations must not be conducted as an auction. Multiple negotiation sessions with a particular offeror may be required. The Evaluation Committee:

- Should obtain written confirmation of any changes to the proposal from each Offeror with whom negotiations have been conducted or develop a Memorandum of Understanding as a supplement or addendum to bridge the differences between the CSB's RFP, the Offeror's proposal, and the subsequent final agreement at the end of negotiations.
- May request best and final offers from each Offeror.
- Must determine which Offeror has made the best proposal.
- Must develop a written determination of the basis for the award decision.

#### **Subject 15.460 - Post a Notice of Intent to Award**

A notice of intent to award (see Appendix J of this Manual) should be posted on the Procurement Bulletin Board for a period of ten (10) days. During this ten day period:

- Unsuccessful offerors should be notified of the award decision.
- Any unsuccessful offeror has an opportunity to protest the award decision.
- Award records must be made available to any offeror desiring to review them.

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At the end of this ten day posting period, a contract can be awarded without the threat of protest of the award. (Refer to Section 25 - Appeals.)

If a Notice of Intent to Award is not posted, a copy of the contract award must be posted and the unsuccessful offerors notified. Unsuccessful offerors have ten (10) days following this posting to enter a protest of the award.

**Subject 15.470 - Award the Contract**

The preferred instrument of award for a competitively negotiated contract is the Standard Contract Form (see Appendix K of this Manual).



## **Sub-Section 15.500 - Procurement of Professional Services**

### **Subject 15.510 - Legal Requirements**

The Virginia Public Procurement Act requires the use of the competitive negotiation procurement method to procure professional services expected to amount to \$30,000 or more. Small purchase procedures (see Section 15.200 of this Manual) may be used to procure professional services amounting to less than \$30,000 if such small purchase procedures have been adopted by the CSB board.

Code of Virginia, Section 2.2-4301 "Competitive Negotiation", Section 3.a
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### **Subject 15.520 - Definition of Professional Services**

Professional services are defined, by the Code of Virginia, as "work performed by an independent contractor within the scope of the practice of accounting,

actuarial services, architecture, land surveying, landscape architecture, law, dentistry, medicine, optometry, pharmacy or professional engineering".

Code of Virginia, Section 2.2-4301
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**Subject 15.530 - Procurement Procedures**

Although the competitive negotiation procurement method is used to procure professional services, there are some major differences in the procedures used as compared to those used to procure nonprofessional services. These differences are:

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- Prepare the RFP and the Evaluation and Award Criteria as in Section 15.500 of this Manual (Competitive Negotiations - Request for Proposals). Note, however, that the solicitation for professional services shall not request that offerors furnish estimates of man-hours or cost for services. Include the Scope of Needs, General Terms and Conditions and Special Terms and Conditions.

Code of Virginia, Section 2.2-4301 "Competitive Negotiation", Section 3.a.
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- Evaluate Proposals - The Evaluation Committee must evaluate the proposals and assign points in the same manner as prescribed for RFPs for non-professional services. The CSB may engage in individual discussions with two or more offerors deemed fully qualified, responsible and suitable on the basis of initial responses and with emphasis on professional competence, to provide the required services.

During this process:

- ◇ Repetitive informal interviews shall be permissible.

- ◇ Offerors shall be encouraged to elaborate on their qualifications and performance data or staff expertise pertinent to the proposed project, as well as alternative concepts. Such discussions may also include non-binding estimates of total project costs, including but not limited to, where appropriate, design, construction and life cycle costs. Non-binding methods to be utilized in arriving at a price for services may also be discussed.
- ◇ At the conclusion of these discussions, the original evaluations should be reviewed and rescored, if necessary, based upon information learned during the individual discussions. The proposals must then be ranked according to the total number of points assigned.

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- Negotiations - Negotiations are conducted as follows, beginning with the offeror ranked first (the one that has been assigned the highest total evaluation points):

If...	Then...
A contract, which is satisfactory and advantageous to the CSB can be negotiated at a price considered fair and reasonable...	The award is made to that offeror.
Agreement cannot be reached with the first-ranked offeror...	<u>Negotiations with that offeror are formally terminated</u> and negotiations are then conducted with the offeror ranked second, and so on until such a contract can be negotiated at a fair and reasonable price.
Negotiations are formally terminated with a particular offeror...	The negotiations cannot be reopened.

If...	Then...
The Evaluation Committee determines in writing (and in its sole discretion) that only one offeror is fully qualified and suitable than the others under consideration...	A contract may be negotiated and awarded to that offeror.

At any time during the negotiations, the CSB may terminate all negotiations and readvertise the requirement. The reason for such termination is to be made a part of the procurement file.

<p>Code of Virginia, Section 2.2-4301  "Competitive Negotiation", Section 3.a</p>
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- Award the Contract - The award document should be a signed contract which:
  - ◇ Incorporates, by reference, all the requirements, terms and conditions of the RFP,
  - ◇ Includes the contractor's proposal as negotiated, and the Memorandum of Understanding if used, and
  - ◇ Includes documentation of all points that have been made a part of the contract through documentation.

## **Sub-Section 15.600 - Procurement of Consultant Services**

The services of a non-professional consultant (services not defined in section 15.600 of this Manual as "Professional Services") are normally procured through the competitive negotiation (Request for Proposals) method. The pricing schedule of the RFP may provide for quotation and payment based upon one of the following:

- A lump sum or fixed price for the total project.
- Hourly rate plus cost reimbursement, with a ceiling on the total contract.
- Daily or hourly compensation for work "when requested" during the period of the contract at agreed-upon rates with a ceiling on the total, including any other costs which have been determined to be allowable.

NOTE: Whenever contracting for services from an individual, be sure that the contractor cannot be considered, by the Internal Revenue Service (IRS), to be an employee. If the individual meets several of the following criteria, he/she may be considered by the IRS to be an employee and the CSB may be held responsible for collecting certain taxes.

1. Must comply with employer's instructions about the work.
2. Receives training from or at the direction of the employer.
3. Provides services that are integrated into the business
4. Provides services that must be rendered personally.
5. Cannot hire, supervise, and pay his or her own assistants.
6. Has a continuing relationship with the employer.
7. Must follow set hours of work.
8. Works full time for an employer.
9. Does his or her work on the employer's premises.
10. Must do the work in a sequence set by the employer.
11. Must submit regular reports to the employer.
12. Is paid regularly on the basis of time worked.
13. Receives payments for business and/or traveling expenses.
14. Relies on the employer to furnish tools and materials.
15. Lack a major investment in facilities used to perform the services.
16. Cannot make a profit or suffer a loss from his or her services.
17. Works for one employer at a time.
18. Does not offer his or her services to the general public.
19. Can be fired at will by the employer.
20. May quit work at any time without incurring liability.

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## **Sub-Section 15.700 - Procurement of Construction**

**Subject 15.710 - Definition** – Construction is defined in the *Code of Virginia* as:

“Building, altering, repairing, improving or demolishing any structure, building or highway, and any draining, dredging, excavation, grading or similar work upon real property.”

Code of Virginia, Section 2.2-4301 “Competitive Sealed Bidding” – 5
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**Subject 15.720 - Method** - Construction may be procured only by competitive sealed bidding, except that competitive negotiation may be used provided the contract is:

- For alteration, repair, renovation or demolition of buildings and not expected to exceed \$500,000 or,
- For construction of highways and any draining, dredging, excavation, grading or similar work upon real property.
- Design-Build or Construction Management Contracts. (See Sub-Section 15.730.)
- Note: If the competitive negotiation method is used, the CSB must determine in writing that "competitive sealed bidding is either not practicable or not fiscally advantageous to the public, which writing shall document the basis for this determination" (VPPA).

Code of Virginia, Sections 2.2-4303.D and 2.2-4305
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**Subject 15.730 - Design-Build or Construction Management Contracts** - Community Services Boards may enter into contracts for construction on a fixed price or not-to-exceed price design-build or construction management basis provided the CSB has complied with the provisions of Section 2.2-4308 of the *Code of Virginia* and obtained the approval of a Design-Build/Construction management Review Board as required in Section 2.2-2406 of the *Code of Virginia*. CSBs that enter into design-build or construction management contracts must have employed or have "under contract a licensed architect or engineer who shall advise the public body regarding the use of design-build or construction management for that project and who shall assist the public body with the preparation of the Request for Proposal and the evaluation of such proposals." The CSB's Board must adopt written procedures governing the selection, evaluation and award of design-build and construction management contracts. Except as otherwise approved by the

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Review Board, procedures for design-build construction projects shall include a two-step competitive negotiation process. Construction management projects shall include selection procedures and required construction management contract terms consistent with the Review Board's regulations. In addition, the CSB's Board must document in writing that:

- A design-build or construction management contract is more advantageous than a construction contract obtained through the IFB procurement method;
- There is a benefit to the CSB by using a design-build or construction management contract; and
- Competitive sealed bidding (IFB) is not practical or fiscally advantageous.

Code of Virginia, Section 2.2-4308
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**Subject 15.740 - Retainage** - An amount, not to exceed five percent (5%) of the total payment, may be retained to assure faithful performance.

Code of Virginia, Section 2.2-4332
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**Subject 15.750 - Bonds** - Bid bonds (except in emergencies) and Performance and Payment bonds are required to be submitted with all bids or proposals for construction contracts in excess of \$100,000. Upon award of a contract in excess of \$100,000, the prime contractor is required to submit a Performance and Payment Bond.

Code of Virginia, Sections 2.2-4336 and 2.2-4337
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**Subject 15.760 - Mistakes in Bid** - The VPPA provides for two different procedures for resolving mistakes in construction bids that differ from the procedures regarding non-construction procurements. The use of the second procedure (requiring submission of work papers with the bid) is highly



recommended. The solicitation (or the CSB Vendor Manual) must indicate which of the following requirements may be used:

- Bidders may be allowed to give written notice of claim to withdraw their bid within two business days after the bid opening **OR**,
- Bidders may submit their original work papers with or prior to the bid opening and must present written claim of a mistake within two hours after the bid opening. The error or omission must be supported by an inspection of the original work papers. If this procedure is utilized, bids are opened the next business day after the date set for receipt of the bids.

Code of Virginia, Section 2.2-4330
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**Subject 15.770 - Construction Planning and Review** - Plans for construction of buildings by CSBs should be reviewed for code compliance by the DMHMRSAS Section of Architecture and Engineering Services. Other technical assistance, relative to construction, may also be obtained from this section by calling (804) 786-3926.

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## **Sub-Section 15.800 - Conference Procurement and Planning**

A successful conference begins with proper planning. A major part of this planning includes the selection of a site for the conference. The following decisions determine the method of procurement for conferences:

If...	Then...
The conference includes only the use of meeting rooms and lodging rooms...	The transaction is considered to be short term rental of real property and, therefore, the competitive re-

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If...	Then...
	quirements of the VPPA do not apply.
<p>The procurement includes:</p> <p>(1) the provision of other services such as catered meals and rental of audio visual or other equipment and</p> <p>(2) the value of these other services exceeds the \$5,000 threshold for competition.</p>	<p>Written quotations should be solicited for the entire package, including the rooms.</p>
<p>The value of other services:</p> <p>(1) exceeds the \$5,000 threshold for competition and</p> <p>(2) the entire package (including rooms) exceeds \$50,000.</p>	<p>The Formal Bidding (Section 15.300 of this Manual) or Competitive Negotiation (Section 15.400 of this Manual) methods of procurement should be used.</p>
<p>There is a compelling reason for selecting a particular hotel/motel for a conference or meeting...</p>	<p>The method for procuring a sole source requirement (Section 10.300 of this Manual) must be followed.</p>

## **Sub-Section 15.900 - Receipt of Bids/Offers and Contract Award Process**

### **Subject 15.910 – Receipt of Bids/Offers**

**Place for receiving bids or proposals.**

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CSB Responsibility - Provide a central location where bids or proposals are received, logged in, date and time stamped, and held unopened in a secure place which is unavailable to the public until the date and time established for opening.

Vendor Responsibility - Have the bid or proposal at the specified location by the date and time noted on the face of the IFB or RFP.

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**Due date and time for receipt of bids and proposals.**

CSB Responsibility - A clock, publicly displayed, or an electronic date and time stamp machine should be used to establish receipt times.

Late Bids or Proposals, regardless of the postmark date should not be accepted.

- Late sealed bids or proposals are to be marked "Late" and returned to the vendor with a cover letter.
- Late informal quotations may be marked "Late" and placed in the bid file but not considered.

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**Vendor's Signature on Bid or Proposal**

Sealed bids or proposals are considered legal documents and are not valid unless signed by an individual who has the authority to commit the bidder or offeror.

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**Facsimile Bids or Proposals**

Facsimile (FAX) bids or proposals:

- Cannot be accepted in lieu of a sealed bid or proposal because they are not delivered in a sealed envelope (their prices are revealed prior to the opening date and time) and they do not contain an

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original signature.

- Are acceptable for small (unsealed or informal) procurements.

**Public Opening**

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Sealed Bids are publicly opened and the following information read:

- Bidders' names
- Unit or lot prices
- Discount terms (if applicable)
- Brand names and model numbers (if requested by the attendees)

NOTE: Questions on the content of other bidders' bids are not answered until after the evaluation is complete and an award decision has been made.

Unsealed bids are not usually opened publicly.

Proposals (responses to RFPs) are not required to be opened publicly. If a public opening is conducted, only the names of firms submitting proposals are disclosed.

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**Subject 15.911 – Determination of Responsiveness**

Before proceeding with the evaluation of an apparent low bidder, the CSB must first determine if the bid is responsive. To be considered responsive, a bid must comply in all material respects with the requirements of the Invitation for Bids (IFB). Areas of non-compliance include deficiencies such as failure to sign

the bid, failure to return the required bid documents, substitution of vendors terms or deletion of the CSB's terms and failure to offer a product or service that meets the requirements of the IFB.

If a proposal (submitted in response to a Request for Proposals) appears to be nonresponsive, the vendor may be contacted and given a reasonable amount of time to supply the missing information or to correct the deficiencies in the proposal. If the offeror fails to adequately respond to this request, the scoring of that proposal should be adversely affected or the proposal may be rejected. It is possible for a proposal to be corrected in this manner since a proposal is subject to negotiation.

### **Subject 15.912 – Determination of Responsibility**

Before proceeding with the evaluation of the apparent low bidder or consideration of an offeror, the CSB must first determine if the bidder or offeror is responsible. If a bidder or offeror is determined to be nonresponsive, no further consideration should be given to that bidder's or offeror's quotation. To be considered responsible, a bidder should:

- Be a regular dealer, supplier, or when required in the solicitation, an authorized dealer of the goods or services offered;
- Have the ability to comply with the required delivery or performance schedule, taking into consideration other business commitments;
- Have a satisfactory record of performance;
- Have a satisfactory record of integrity; and

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- Have the necessary facilities, organization, experience, technical skill, and financial resources to fulfill the terms of the purchase order or contract.

A deficiency in any one of the above areas will determine the bidder or offeror to be nonresponsive. Once this determination is made by the CSB, it is the bidder's or offeror's responsibility to rebut the determination. This rebuttal

must be made within ten business days after receipt of the notice of nonresponsibility. Bidders or offerors may seek a reversal of this decision through the appeals process.

Code of Virginia, Section 2.2-4359
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### **Subject 15.920 - Preferences**

Local or Virginia Vendor Preference - Preferences are allowed:

- In the event to a tie bid, an award must be made to the Virginia bidder or to bidders quoting on Virginia-produced goods, services or construction providing everything else is equal.

Code of Virginia, Section 2.2-4313.A
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***NOTE:** Tie bids between two or more Virginia vendors or between two or more out-of-state vendors can be decided by a drawing or a toss of a coin.*

- If an out-of-state vendor from a state that has an in-state preference submits a bid that is lower than a bid submitted by a Virginia vendor, the amount of the percent of preference allowed by that out-of-state vendor's home state must be subtracted from the Virginia vendor's bid prior to determining the award.

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**EXAMPLE:** If out-of-state Bidder "A" (from a state having an in-state preference of 4%) bid \$1.00 each and a Virginia bidder bid \$1.03 on an equal product, the award must be made to the Virginia bidder because his/her price of \$1.03 is within 4% of Bidder A's price.

Code of Virginia, Section 2.2-4324.B

Recycled Content – If a tie bid exists and it is not possible to resolve the tie using the Local or Virginia Vendor Preference rules as stated above, “preference shall be given to the bidder whose goods contain the greatest amount of recycled content”.

Code of Virginia, Section 2.2-4324.C

Minority, Small Business or Women-Owned Businesses - The Virginia Public Procurement Act requires all public bodies to establish programs to "facilitate the participation of small businesses and businesses owned by women and minorities in procurement transactions". The requirements of this section are normally attained by:

- Outreach activities, such as meeting with disadvantaged bidders (individually or during trade shows) to encourage their participation in the procurement process.
- Including small, minority, and women-owned businesses in the list of companies solicited for bids or proposals.
- Making special efforts to make awards to small, minority, and women-owned business when making purchases that fall below the dollar amount for which competition is required.

Code of Virginia, Section 2.2-4310B

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**Subject 15.930 – Prompt Payment Discount**

Prompt payment or cash discounts are normally not considered when determining the lowest responsive bidder. If a successful bidder offers a prompt payment discount, it should be included in the purchase order and the discount taken if payment is made within the time prescribed for obtaining the

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discount. If a program can process invoices and make payments within 10 to 20 days, the CSB may wish to include the "Discounts" statement from Section II of Appendix E in the IFB. If this statement is included, the amount of the bidder's cash discount (i.e., 2%-20 days) will be deducted prior to determining the lowest price. NOTE: This information should not be confused with the requirement to make prompt payment of all valid invoices (see Subject 20.300)

### **Subject 15.940 - Taxes**

Governmental units (including CSBs) are normally exempt from paying federal excise or state sales taxes.

**EXCEPTION:** Materials that are installed and become a part of real property may be subject to Virginia sales taxes.

**EXAMPLE #1:** Equipment that is hard wired or plumbed in since it becomes part of the building.

**EXAMPLE #2:** Carpet that is glued down. (It cannot usually be taken up and used elsewhere and, thus, becomes a part of the building.)

**NON-EXAMPLE:** Carpet that is tacked down can be taken up and installed in another area; therefore, it does not become a part of the building and is not subject to Virginia sales taxes.

### **Subject 15.950 - Purchase Order or Contract Document**

An acceptance of a written offer (bid or proposal) should be made in writing using either a purchase order or a contract form. (Samples of each form are included in Appendix K of this Guide.) Although small purchase awards may



be made orally for contracts amounting to \$2,000 or less, under the provisions of the Uniform Commercial Code, a contract for the purchase of goods amounting to \$500 or more is not enforceable. (Code of Virginia, Section 8.2-201).

Normally, the decision of whether to use a purchase order or a contract form is based upon the following:

If the procurement action...	Then, the form generally used as a contract document is...
Involves a one time purchase.	A purchase order form.
Results in a term contract (contract to be completed over a period of several weeks or months).	A contract form.
Contains complex issues that have been negotiated and need to be incorporated into an agreement or contract.	A contract form.

A contract document (purchase order or contract form):

- Is the contractor's authority to ship or perform. A contractor is not obligated to ship goods or perform contract functions until he/she has received a written acceptance or award (purchase order or contract form). Such written award must be signed by someone who has the authority to commit the CSB. (This authority should either be written in the purchasing officer's job description or issued in writing by the Executive Director or the Board.)

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- Obligates the CSB to pay for that which has been contracted. Conversely, a CSB is not obligated to pay for anything for which no written acceptance has been issued.

**Note: *Occasionally, firms will ship unsolicited goods for which no purchase order has been issued hoping that, once the goods***

*have been shipped, the receiver will approve the invoice. Often the prices charged do not constitute bargains; therefore, it is a good policy to notify all shippers of unsolicited goods that no payment will be made and that the goods should be picked up within a stated time period and, if not picked up, they will be disposed of. This notification should be confirmed in writing if an adequate address is available.*

- Can only be modified by the person authorized by the CSB to conduct the procurement. Program managers should, therefore, be cautioned not to commit to substantive changes in a contract (especially if those changes require more funds) without formal approval through the person who has been authorized to handle the procurement. CSBs should be cautious in making changes that would substantially alter a contract beyond its original intent. Note that fixed-price contracts cannot be increased by more than 25% or \$50,000 without Board approval unless such increases are provided for in the contract. (See Sub-Section 20.400)

A contract may be modified by:

Type of modification...	Form used...	Sample form located in...
Make changes in Purchase Orders (correct errors, add or delete small quantities for goods).	Purchase Order Change Form.	Appendix L-2 of this Manual.
Make changes in term contracts.	Modification to Contract Form.	Appendix L-1 of this Manual.

### **Subject 15.955 - Cancellation of Solicitation or Rejection of Bids/Proposals**

- Solicitation: A solicitation (RFP or IFB) may be canceled; however, written documentation explaining the reasons for cancellation must be included in the contract file. A solicitation cannot be canceled "solely to avoid

awarding a contract to a particular responsive and responsible bidder or offeror”.

- Bid or Proposal: The reason(s) for rejecting a bid or proposal must be included in the contract file.

Code of Virginia, Section 2.2-4319
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### **Subject 15.960 - Termination of Contract**

Contracts may be terminated:

- For default.
- By mutual agreement.
- For the convenience of the CSB (if the contract terms allow for termination for convenience).

***NOTE: The person handling the procurement should not give away the rights of the CSB by agreeing to cancel a contract solely for the benefit of the contractor and relieve that contractor from any further responsibility. (See Section 20.130 on Default.)***

### **Subject 15.970 - Assignment of Contract Manager**

A Contract Manager must be assigned for each contract to be responsible for overseeing the completion of the project by the contractor. The Contract Manager may be the Procurement Officer or this responsibility may be assigned to someone who has program implementation responsibilities. The Contract Manager is responsible for:

- Day to day coordination of the delivery of the goods/service;
- Administration of contract performance evaluations and participation in performance evaluation meetings of key staff, as appropriate.
- Report persistent or serious service delivery failures or other compliance failures by the Contractor to the Procurement Office.
- Assurance that proper action has been taken to modify the contract through the Procurement Office before the Contractor proceeds with any changes. Makes written recommendations to the Procurement Office regarding any changes needed in the scope of work, duties of the parties, contractual terms or other elements of the contract.
- Submitting written recommendations with justifications to the Procurement Office regarding any changes needed in the contract.
- Monitoring budget and funding activities associated with the project and promptly report any issues or inconsistencies.
- Keeping the Procurement Office informed regarding the status of performance of the contract.
- Notifying the Procurement office of the completion of work.
- Assuring that the Contractor complies with all requirements of the contract.

See Section 20 - Contract Administration.